

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Creation of a Low Power Radio Service)	MM Docket No. 99-25
)	

To: The Commission

COMMENTS OF LIFETALK RADIO, INC.

LifeTalk Radio, Inc. ("LTR"), by counsel, hereby submits these comments in response to the FCC's *Fifth Report and Order, Fourth Notice of Proposed Rulemaking and Fourth Order on Reconsideration*, FCC 12-28, rel. March 19, 2012 (the "NPRM") in the above-identified proceeding. LTR is a radio program network owned and operated by Adventist Media Center, Inc., a media ministry of the Seventh-day Adventist Church. LTR provides a full time 24/7 stream of programming to a network of radio stations throughout the United States – many of which are LPFM stations. From its operational interaction and relationships with its LPFM affiliates, LTR has accumulated a knowledge bank of information about the issues that affect LPFM applicants and licensees. LTR draws upon that knowledge bank as the basis for these comments.

In the NPRM, the Commission properly emphasizes as a key criterion for LPFM eligibility that the applicant be community-based.¹ This is an appropriate criterion and LTR supports the Commission's plan to continue to include localism as an central element of the LPFM construct. LTR also supports the Commission's proposal to amend the rules to clarify

¹ NPRM, at ¶53.

that an applicant should not only be local at the time of application, but also at all times thereafter.

However, there is another aspect about localism in the rules that was not addressed in the NPRM and which LTR believes requires clarification as well. In the earlier phases of this rulemaking proceeding, an issue was raised on reconsideration as to whether the local chapter of a national or other large organization should be deemed to qualify as a local community-based entity for purposes of LPFM eligibility, and whether the media interests held by the national organization or other local chapters should be attributable to it.

The Commission decided that local chapters of larger organizations could indeed qualify to be local LPFM applicants without the attributable interests of the larger organization and crafted §73.858(b) of the rules as follows:

(b) A local chapter of a national or other large organization shall not have the attributable interests of the national organization attributed to it provided that the local chapter is separately incorporated and has a distinct local presence and mission.

This rule added a new criterion for LPFM eligibility in this situation – i.e., incorporation. Generally, an applicant for a new noncommercial broadcast construction permit (including LPFM permits) only needs to be a bona fide nonprofit entity to qualify. Other than as stated in this rule, a noncommercial applicant is not required to be incorporated.

LTR is aware of at least one litigated LPFM licensing decision where the facts implicated this rule, but in which the Media Bureau decided that separate incorporation was not necessary. *See, Montmorenci United Methodist Church*, 22 FCC Rcd. 11110 (MB 2007), *Application for Review pending*. In that case, a local Methodist Church, an unincorporated local chapter of a larger organization, was determined by the Media Bureau to qualify as a local entity and to be

free of the larger organization's attributable interests because the church had "demonstrated that it has a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated."² For whatever reason, the Bureau chose to ignore the element of the rule that required separate incorporation.

LTR believes that the Bureau's decision in that case was probably the preferable option philosophically speaking. However, it did run objectively contrary to the letter of the rule. Many of LTR's LPFM affiliate licensee's were created as new local corporations directly in response to the provisions of §73.858(b) that mandated separate incorporation in order to separate themselves from larger national organizations with which the corporate organizers were affiliated. This was a burden in terms of organizational paperwork and regulatory requirements to maintain a corporation, and it cost applicants comparative points when they could not show pre-filing date existence for the two-year period necessary to earn a comparative point. The original unincorporated entities usually existed in their communities for many years prior to the LPFM filing opportunity. The gist of the Bureau's decision in *Montmorenci* is to render those efforts unnecessary. However, as long as the language of the rule and the Bureau's policy are inconsistent, applicants are confused about how to prepare for the next filing window.

As the Bureau's findings in *Montmorenci* demonstrated, it is quite possible to be an unincorporated local chapter of a larger organization and still maintain significant local purposes that are consistent with the Commission's long-standing policy that localism should be the bedrock of the LPFM service. Accordingly, LTR recommends that the Commission amend §73.858(b) to delete the requirement of separate incorporation.

² *Montmorenci United Methodist Church*, at 11110.

Respectfully submitted

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May 7, 2012